

STATE OF MICHIGAN
COURT OF APPEALS

RONEY GLENN, d/b/a GTS CONSTRUCTION,
Plaintiff-Appellant,

UNPUBLISHED
July 21, 2015

v

MARY LOUISE YARBROUGH, Personal
Representative of the Estate of JUANITA
OPALREE DANSBY,

No. 322537
Genesee Probate Court
LC No. 13-196539-CZ

Defendant-Appellee.

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right the probate court's April 8, 2014 order granting defendant's motion for summary disposition and denying plaintiff's motion to amend his complaint. When entering the April 8, 2014 order, the court restated a prior order entered on January 21, 2014. Plaintiff's motion for reconsideration, challenging both the April 8 order and the prior January 21 order, was denied on June 11, 2014. Because the trial court did not err by enforcing the parties' settlement agreement and the enforcement of the settlement agreement renders plaintiff's remaining claims moot, we affirm.

Plaintiff filed the present lawsuit in an effort to obtain payment for repair work he performed on decedent Juanita Opalree Dansby's home, which was damaged by fire. Plaintiff alleged that decedent and her son, Sylvester Holt, entered into a contract with plaintiff to repair damage to the decedent's home. According to plaintiff, when the decedent died in April 2012, the sum of \$40,956.75 remained unpaid on the contract, but defendant Mary Louise Yarbrough, the personal representative of the decedent's estate, denied the claim.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that, while plaintiff had an individual residential builder's license, plaintiff's limited liability company, GTS Construction, L.L.C., did not have a residential builder's license as required by MCL 339.2405. Further, plaintiff did business under an assumed name, but had not filed an assumed name certificate as required by MCL 445.1. Thereafter, plaintiff moved to file an amended complaint seeking to add Holt as a party defendant, asserting that Holt also signed a contract for repair of the damage to his mother's home, and that Holt was a proper party defendant because he had not paid plaintiff the final insurance proceeds.

On January 21, 2014, the probate court granted defendant's motion for summary disposition on the ground that plaintiff had not filed an assumed name certificate to do business as GTS Construction. The court also denied plaintiff's motion to amend the complaint.

After the hearing, in a written letter to defense counsel, plaintiff's counsel offered to settle the matter for one half the amount of the available insurance proceeds. Defendant agreed. When plaintiff subsequently refused to sign documentation necessary to accomplish the settlement, defendant filed a petition for an order authorizing the decedent's insurer, Allstate Insurance Company, to reissue the final benefit check in the amount of \$14,179.15. At a hearing on defendant's petition, plaintiff denied that he had agreed to the settlement. The probate court nonetheless determined that the agreement was enforceable because it has been agreed to, in writing, by plaintiff's counsel. The trial court thus granted defendant's request and entered an order on April 8, 2014, directing Allstate to issue a draft in the amount of \$6,569.57 payable to plaintiff and to issue a draft in the amount of \$7,609.58 payable to defendant.¹ Also on April 8, 2014, the trial court entered an "order to restate prior order of summary disposition," in which the trial court reiterated the granting of defendant's motion for summary disposition and its denial of plaintiff's request to amend his complaint.

Plaintiff moved for reconsideration of the order authorizing the reissuance of the benefits check, arguing that he did not agree to split the insurance check with defendant, and that the probate court also erred by granting defendant's motion for summary disposition. On June 11, 2014, the probate court denied plaintiff's motion for reconsideration, finding that its prior rulings were not erroneous. Plaintiff now appeals as of right.²

On appeal, plaintiff argues that the probate court erred by enforcing the settlement agreement between the parties. According to plaintiff, he did not consent to the agreement in open court or in writing, rather his counsel agreed to the settlement. By entering into an agreement without plaintiff's consent, plaintiff argues that his counsel violated MRPC 1.2(a) and made misrepresentations to defendant by suggesting that plaintiff had consented to the agreement. Under these circumstances, plaintiff contends the settlement agreement may not be enforced.

"A settlement agreement is a contract, governed by the legal rules applicable to the construction and interpretation of other contracts." *Reicher v SET Enterprises, Inc.*, 283 Mich

¹ Apparently, the difference in the amounts resulted from an award of attorney fees to defendant.

² We reject defendant's argument that this Court lacks jurisdiction because plaintiff did not file his claim of appeal within 21 days after entry of the January 21, 2014 and April 8, 2014 orders. On April 27, 2014, plaintiff filed a timely motion for reconsideration of the April 8 order. That motion was denied on June 11, 2014, and plaintiff filed his claim of appeal within 21 days after that order. Therefore, plaintiff's claim of appeal was timely under MCR 7.204(A)(1)(b). And, because an appellant challenging a final order may raise an issue related to a prior order, *Green v Ziegleman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009), this Court has jurisdiction to review the January 21, 2014 order.

App 657, 664; 770 NW2d 902 (2009). We review de novo questions of law regarding the existence and interpretation of a contract. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). As a contract, a settlement agreement requires both an offer and acceptance of that offer. *Id.* “An offer is defined as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Id.* at 453 (quotation marks and citation omitted). Unequivocal acceptance of such an offer creates a contract. *Id.* at 453-454. Moreover, “[a]n attorney has the apparent authority to settle a lawsuit on behalf of his or her client.” *Id.* at 452.

Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement. [*Nelson v Consumers Power Co*, 198 Mich App 82, 90; 497 NW2d 205 (1993).]

However, even if a settlement agreement fulfills the principle of contract formation, it will not be enforced, and will not be binding under principles of apparent authority, unless it also satisfies the requirements of MCR 2.507(G). *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 668; 649 NW2d 760 (2002). See also *Nelson*, 198 Mich App at 90. MCR 2.507(G) provides:

Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered *or by that party's attorney*. [Emphasis added.]

In this case, the trial court properly enforced the settlement agreement between the parties because the agreement was entered into by plaintiff's attorney, who had the apparent authority to settle the matter on plaintiff's behalf, and there was evidence of the agreement in writing, signed by plaintiff's attorney, in keeping with the requirements of MCR 2.507(G). In particular, after the trial court initially granted defendant's motion for summary disposition, plaintiff's counsel sent a signed letter to defendant's counsel, which stated:

As I indicated at the hearing today, I have a right to file a motion for reconsideration on this case, and I have the right to re-file the case under Mr. Glenn's dba.

However, my clients have advised me they are willing to settle the case for half the amount of the insurance check you have in your possession. . . .

At the hearing this morning you indicated your client would be willing to settle under these circumstances. Please confirm. . . .

The following day, plaintiff's counsel sent another letter to defendant's counsel, stating: "Please let me know if your client is willing to settle for one-half the insurance proceeds on this case." It is uncontested that defendant agreed to the settlement offer, and thus a contract was formed. See *Kloian*, 273 Mich App at 453-454.

Although plaintiff argues that he did not personally consent to the settlement, as noted, "[a]n attorney has the apparent authority to settle a lawsuit on behalf of his or her client," *id.* at 453; and thus defendant's counsel was entitled to rely on plaintiff's counsel's apparent authority to settle this matter, *Nelson*, 198 Mich App at 89-90. Further, plaintiff's counsel's letter to defendant's counsel, indicating that plaintiff was willing to settle the matter for one half the insurance proceeds, was signed by plaintiff's counsel, and therefore satisfied the writing requirement in MCR 2.507(G). The probate court did not err by enforcing the settlement offer.

Given that the trial court properly enforced the parties' agreement, we are also persuaded that plaintiff's remaining arguments regarding the trial court's other orders became moot upon the parties' settlement of the case. See *Sucoe v Oakwood Hosp Corp*, 439 Mich 919; 479 NW2d 637 (1992). Had plaintiff wanted to preserve his ability to challenge the trial court's grant of summary disposition or the court's denial of his motion to amend, his attorney should have included within the settlement offer a stipulation allowing plaintiff to appeal the trial court's orders. See generally *Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 666; 516 NW2d 132 (1994). Plaintiff did not do so and, consequently, he may not challenge on appeal issues relating to an action resolved in its entirety by virtue of the parties' settlement.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Patrick M. Meter